



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2015-0780; FRL-9939-68]

Lead; Renovation, Repair and Painting Program; Lead Test Kit; Notice of Opening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is opening a comment period to allow for further public comment on lead test kits and other field testing options as suggested in EPA's Fiscal Year 2015 Appropriations Act policy rider. Among other things, the 2008 Lead Renovation, Repair, and Painting rule (RRP) established performance recognition criteria for lead test kits for use as an option to determine if regulated lead-based paint is not present in target housing and child-occupied facilities. The use of an EPA-recognized lead test kit, when used by a trained professional, can reliably determine that regulated lead-based paint is not present by virtue of a negative result. The RRP rule also established negative response and positive response criteria for lead test kits recognized by EPA. No lead test kit has been developed that meets the positive response criterion. On June 4, 2015, EPA hosted a public meeting and webinar to solicit input from stakeholders in an effort to understand the current state of the science for lead test kits and lead-based paint field testing alternatives, as well as the existing market and potential availability of additional lead test kits. To date, no company's lead test kit has met both the negative response and positive response criteria outlined in the RRP rule. Based on stakeholder input, EPA is unaware of any lead test kit available now or in the foreseeable future that would meet both of the performance criteria.

DATES: Comments must be received on or before *[insert date 60 days after date of publication in the Federal Register]*.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2015-0780, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>. The docket for this action will remain open until *[insert date 60 days after date of publication in the Federal Register]*.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:*

The Agency's lead information Contact Us form at <http://www2.epa.gov/lead/forms/contact-us> or visit www2.epa.gov/lead. You may also contact Toiya Goodlow, National Program Chemicals Division (7404M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566-2305; email address: goodlow.toiya@epa.gov.

For general information contact: The National Lead Information Center, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number:

1-800-424-LEAD (5323); online information request form:

<http://www2.epa.gov/lead/forms/lead-hotline-national-lead-information-center>.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This document is directed to stakeholders that develop, manufacture and/or sell lead test kits or other lead-based paint field testing instruments. You may be potentially affected by this action if you manufacture or sell lead test kits, or if you use lead test kits to determine if lead-safe work practices are required under the RRP rule to perform renovations for compensation in target housing or child-occupied facilities. Examples of child-occupied facilities are day-care centers, preschools, and kindergarten classrooms.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

II. What Action is the Agency Taking?

On April 22, 2008, EPA published the Lead Renovation, Repair, and Painting rule. It requires contractors to use lead-safe work practices during renovation, repair, and painting activities that disturb lead-based paint in target housing and child-occupied facilities built before 1978 unless a determination can be made that no lead-based paint would be disturbed during the renovation or repair (Ref. 1). The use of an EPA-recognized lead test kit, when used by a trained professional, can reliably determine that regulated lead-based paint is not present by virtue of a negative result. The federal standards for lead-based paint in target housing and child-occupied facilities is a lead content in paint that equals or exceeds a level of 1.0 milligram per square centimeter (mg/cm^2) or 0.5 percent by weight. If regulated lead-based paint is not present, there is no requirement to employ lead-safe work practices under the RRP rule.

The RRP rule established negative response and positive response criteria outlined in 40 CFR 745.88(c) for lead test kits recognized by EPA. Lead test kits recognized before September 1, 2010, must meet only the negative response criterion outlined in 40 CFR 745.88(c)(1). The negative response criterion states that for paint containing lead at or above the regulated level, $1.0 \text{ mg}/\text{cm}^2$ or 0.5% by weight, a demonstrated probability (with 95% confidence) of a negative response less than or equal to 5% of the time must be met. The recognition of kits that meet only this criterion will last until EPA publicizes its recognition of the first lead test kit that meets both the negative and positive response criteria outlined in the rule.

Lead test kits recognized after September 1, 2010, must meet both the negative response and positive response criteria outlined in 40 CFR 745.88(c)(1) and (2). The positive response criterion states that for paint containing lead below the regulated level, $1.0 \text{ mg}/\text{cm}^2$ or 0.5% by weight, a demonstrated probability (with 95% confidence) of a positive response less than or equal to 10% of the time must be met. Qualitatively speaking, lead test kits recognized

by EPA should also serve as a quick, inexpensive, reliable, and easy to perform option for lead-based paint testing in the field.

To date no lead test kit has met both of the performance criteria outlined in the RRP rule. However, there are two EPA-recognized lead test kits commercially available nationwide that meet the negative response criterion and continue to be recognized by EPA on such basis.

The report accompanying the EPA Fiscal Year 2015 Appropriations Act included a policy rider that states:

Lead Test Kit-In 2008, EPA adopted the Lead Renovation, Repair, and Painting rule which included criteria by which the Agency could certify a test kit that contractors could use onsite to comply with the rule; yet, 6 years later no kit has been developed that meet these standards. The Agency is directed to prioritize efforts with stakeholders in fiscal year 2015 to identify solutions that would allow for a test kit to meet the criteria within the 2008 rule to reduce costs for consumers, remodelers and families to comply with the rule. If no solution is reached by the end of the fiscal year, EPA should revisit the test kit criteria in the 2008 rule and solicit public comment on alternatives (Ref. 2).

In response, EPA solicited input from stakeholders in an effort to understand the current state of the science for lead test kits and lead-based paint field testing alternatives, as well as the existing market and potential availability of additional lead test kits (Ref. 3). On June 4, 2015, EPA hosted a public meeting and webinar with stakeholders including lead test kit developers and manufacturers, non-governmental organizations, trade associations, National Lead Laboratory Accreditation Program (NLLAP) accreditation organizations and laboratories, and state and federal government staff members. Ninety-five people participated in the meeting and 12 public comments were submitted to the public docket. EPA also held three individual meetings with lead test kit developers and trade associations.

EPA has carefully reviewed the comments and recommendations received through these stakeholder outreach efforts. Stakeholders provided comments on the following topics: lead test kits, X-Ray Fluorescence (XRF) testing, limiting the scope of the RRP rule, NLLAP testing,

the lead-based paint definition, EPA's Environmental Technology Verification (ETV) Program, the economic analysis supporting the RRP rule, and harmonization of regulatory standards. Based on stakeholder input, EPA is unaware of any lead test kit available now or in the foreseeable future that would meet both the positive response and negative response criteria. EPA concluded that no recommendation received thus far would provide an immediate solution to allow for a lead test kit that would meet both of the performance criteria and have the potential to "reduce costs for consumers, remodelers and families," per the EPA Fiscal Year 2015 Appropriations Act policy rider.

At this time, EPA has no plans or resources to sponsor additional testing of kits as was done previously through the agency's ETV Program. However, lead test kit manufacturers are allowed at any time to submit to EPA data on their kit's performance that is based on an EPA approved ETV-equivalent test protocol. If a newly-developed lead test kit is shown to meet both the positive response and negative response criteria, EPA would recognize the lead test kit as meeting both criteria under 40 CFR 745.88(c).

Given this current status and the input received from stakeholders, EPA is opening a comment period to allow for further public comment on lead test kits and other field testing options as suggested in EPA Fiscal Year 2015 Appropriations Act policy rider. Without proposing any regulatory amendments at this time, EPA is specifically soliciting comment on the following potential lead test kit and field testing options:

- Proposing to eliminate the positive response criterion;
- Proposing to modify the positive response criterion;
- Maintaining the current negative response and positive response criteria;
- Proposing to provide reduced RRP certification training requirements for XRF

technicians; and

- Exploring any other lead-based paint field testing technology that would provide reduced costs for consumers, remodelers and families to comply with the RRP rule.

Commenters should provide technical information and data used to substantiate your recommendation. See the commenting tips at <http://www2.epa.gov/dockets/commenting-epa-dockets#tips> for further information on preparing and submitting comments. Comments must be received on or before *[insert date 60 days after date of publication in the **Federal Register**]*.

Additionally and separately, EPA will provide a subsequent opportunity to provide public comment through the Regulatory Flexibility Act, section 610, review of the RRP rule. Public comments requested at that time will be related to broader stakeholder recommendations regarding the RRP rule. For more information about the Regulatory Flexibility Act, section 610, reviews, please visit <http://www2.epa.gov/reg-flex/section-610-reviews>.

III. References

As indicated under **ADDRESSES**, a docket has been established for this notice under docket ID number EPA-HQ-OPPT-2015-0780. The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Lead; Renovation, Repair, and Painting Program; Final Rule, **Federal Register**, April 22, 2008 (73 FR 21692) (FRL-8355–7).
2. 160 Cong. Rec. H9,307, H9,767 (daily ed. Dec. 11, 2014) (Explanatory Statement Submitted by Mr. Rogers of Kentucky, Chairman of the House Committee on Appropriations

regarding the House Amendment to the Senate Amendment on H.R. 83) (mentioning lead test kits).

3. EPA. Lead; Renovation, Repair and Painting Program; Lead Test Kit Stakeholder Meeting; Notice of Public Meeting. **Federal Register**, May 14, 2015 (80 FR 27621) (FRL-9927–40).

Authority: 15 U.S.C. 2601 et seq.

Dated: December 14, 2015.

James Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

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